

**Remarks/Arguments**

Reconsideration of this application and withdrawal of the final rejection dated February 4, 2004, is respectfully requested in view of the foregoing amendments to the claims, the attached Declarations under Rule 132, and the following remarks.

The current status of the claims are 1-34 and 80-106 are currently pending and have been finally rejected. Claims 35-79 have been previously canceled.

In the Official Action of February 4, 2004, the Examiner has rejected all of the claims under 35 U.S.C. 103 as unpatentable over the Chader et al. patent (U.S. Patent 5,617,857). This rejection as it applies to the claims now presented for examination is respectfully traversed.

The Examiner's attention is directed to the two Declarations under Rule 132. These Declarations by two surgeons in different fields of surgery, one in the United States and one in Germany, show that there are significant advantages in the field of surgery to an active wireless optical tracking device. As indicated in these Declarations, it is important to minimize the clutter of cords within the surgical field. This is so important that hardwired systems are not considered acceptable. Further, the hardwired systems make it difficult to position the active tracking devices so that the devices can maintain line of sight for properly tracking the instruments.

The Chader et al. device only discloses a hardwired smart instrument device. It is contended that the advantages of a wireless smart instrument would not have been obvious to one of ordinary skill in the art as of the filing date of the instant application. Furthermore, amended claims 2, 24, and 30, plus the claims dependent on these claims, cover devices that self identify themselves to the system when placed within a surgical volume. This is contrary

to the Chader et al. disclosure that indicates the devices are identified to the system when physically connected to the system. It is contended that there are significant differences between connecting wires, which may or may not be within the surgical volume and automatically recognizing a device within the surgical volume and that these differences would not have been obvious to a person of ordinary skill in the art. For these reasons, it is contended that all the claims are not obvious in view of the Chader reference and therefore this rejection should be withdrawn.

In the Official Action, the Examiner has rejected all claims as unpatentable under §35 U.S.C. 103 based on Chader et al. in view of Acker et al. (U.S. Patent 6,453,190). This rejection as it applies to the claims now presented for examination is respectfully traversed.

The Examiner cited Acker et al. for the disclosure that a wireless device can be used. It is contended however that the Acker devices relate to a magnetic system. It is well known that magnetic systems have significant problems and disadvantages not shared by optical systems as claimed in the claims of the present invention. Furthermore, a person of ordinary skill in the art would not be led to use a wireless active optical system based on the disclosure of a wireless magnetic system either alone or in combination with Chader et al. For this reason it is contended that the combination of Acker et al. plus Chader et al. is inappropriate and further that all claims, particularly claims 2, 24 and 30 and the claims dependent thereon, are patentable in view of this combination of references.


It is contended that this application has now been placed in condition of allowance by the indication thereof is respectfully requested.

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Reply to Final O.A. of 2/4/04

If the Examiner has any questions or issues relative to this response, the Examiner is invited to telephone the undersigned attorney.

Respectfully submitted,

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